IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Board of Patent Appeals and Interferences

Applicant:	James H. Wolfston, Jr.
App. No.:	10/041,946
Filing Date:	01/07/2002
Title:	Coordination of Independent Billing and Liquidity Providers to Facilitate Electronic Payments
Examiner:	Ojo O. Oyebisi
Art Unit:	3694

APPEAL BRIEF

In accordance with 37 C.F.R. 41.37, Appellant hereby submits this brief in furtherance of the Notice of Appeal, filed in this case on March 19, 2008, and received by the U.S. Patent and Trademark Office on March 19, 2008.

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. 1.8

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office, on the date shown below.

On: September 19, 2009

By: ______________________

Name: Michael O. Scheinberg
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I. Real Party in Interest

The real party in interest in this appeal is:

CollegeNet, Inc, a Delaware Corporation having its principal place of business in Portland, Oregon.

II. Related Appeals and Interferences

There are no prior or other pending appeals, judicial proceedings, or interferences known to appellant which may be related to, directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal.

III. Status of Claims

A. Total Number of Claims in Application

There are a total of 35 claims in the application.

B. Status of All the Claims

1. Claims canceled: NONE
2. Claims withdrawn from consideration but not canceled: NONE
3. Claims pending: Claims 1-35
4. Claims allowed: NONE
5. Claims rejected: 1-35

C. Claims on Appeal

The claims on appeal are: 1-35

IV. Status of Amendments

Appellants have not filed any amendments subsequent to final rejection.

V. Summary of Claimed Subject Matter

Applicants' claims 1, 6, 11, 14, 18, 22, 30 and 33 are in independent form.

Applicants' independent claim 1 recites a method of financing transactions between payors and merchants, the payors charging utility or other billing accounts serviced by third parties in order to complete the transactions with the merchants, proceeds of the transactions being initially provided to the merchants by one or more participating funds owned and managed separately from the third parties and unaffiliated with those third parties, and the transaction proceeds being later restored to the funds by the third parties. Specification, paragraphs [1011] and [1012], Abstract. The method comprises charging by a payor to a third party billing account a transaction amount charged by a merchant ([1011]) and [1014]); transferring from one of the participating funds to the merchant the transaction amount minus a service fee ([1014]); collecting by the third party the transaction amount from the payor ([1015]); and transferring funds corresponding to the transaction amount from the third party to the fund ([1015]), compensating the third party and the fund from the transaction amount ([1014], [1015]), whereby the merchant has use of the major portion of the transaction amount shortly after charging by the payor, the third party receives compensation for its service, and the fund receives compensation that provides a return on investment to the fund to the benefit of its investors. (Abstract, [1014])

Independent claim 6 is directed at a method of facilitating payment between a payor and a merchant, comprising: undertaking by a payor of an obligation to pay a merchant a transaction amount ([1013]); providing funds corresponding to the transaction amount to the merchant from a liquidity source ([1014]); billing the payor by a third party biller ([1015]), the third party biller being an entity other than the liquidity source ([1005]); collecting the transaction amount from the payor by the third party biller([1015]); and providing by the third party biller funds

corresponding to the transaction amount to the liquidity source ([1015]), thereby providing liquidity to the merchant from the liquidity source and the liquidity source being repaid by payor funds collected by the third party biller. (Abstract)

Independent claim 11 is directed at a system of providing liquidity to merchants and facilitating payments by payors, comprising: a source of funds for paying the merchant when a transaction is undertaken (Fig. 1, Ref. No. 112); and a third party biller different from the source of funds for billing the payor (Fig. 1, Ref. No. 110), collecting funds from the payor (Fig. 1, ref no. 174), and reimbursing the source of funds (Fig. 1, ref no. 170).

Independent claim 14 is directed at a method of financing transactions between merchants and payors, comprising: accepting money to be pooled in a fund ([1022]); in response to a transaction between a merchant and a payor, a transaction amount being charged to the payor's account at a third party who is unrelated to the party accepting the money to be pooled in the fund ([1013]), transferring the transaction amount less a service fee from the pooled fund to the merchant ([1014]); and receiving funds corresponding to the transaction amount collected from the payor by the unrelated third party ([1015]).

Independent claim 18 is directed at a method of brokering transactions between payors and merchants, comprising: presenting to a payor, in response to a transaction between the payor and a merchant, a request to select an account at a third party biller to which to charge a transaction amount ([1013]); requesting authorization of the charge from the selected third party biller ([1014]); triggering the selected third party biller to bill the payor ([1015]); and requesting a liquidity source that is not the same entity as the third party biller to transfer funds corresponding to the transaction amount to the merchant, the liquidity source being repaid by the third party biller ([1014]).

Independent claim 22 is directed at a method of facilitating payment between a payor and a merchant, comprising: participating as a merchant in a transaction in which a payor agrees to pay the merchant a transaction amount to be charged to a billing account at a third party ([1013]); and receiving funds corresponding to the transaction amount from a liquidity source ([1014]), the liquidity source being an entity other than the third party ([1005]); wherein participating in the transaction includes triggering a third party biller, to bill the payor ([1015]); collect the transaction amount from the payor ([1015]); and transfer a sum corresponding to the transaction amount to the liquidity source ([1015]), the liquidity source providing liquidity to the merchant and being repaid by payor funds collected by the third party biller ([1015]).

Independent claim 30 is directed at a method of facilitating a transaction between a merchant and a payor, comprising: verifying by a biller the validity of a charge of a transaction amount for a transaction between a merchant and a payor (Fig. 1, ref. no. 156); charging the transaction amount to the payor's account (Fig. 1, ref. no. 172), thereby triggering payment of an amount corresponding to the transaction amount from a liquidity source to the merchant (Fig. 1, ref. no. 164), the liquidity source being unaffiliated with the biller ([1005]); collecting the transaction amount from the payor ([1015]); and transferring an amount corresponding to the transaction amount to repay the liquidity source (Fig. 1, ref. no. 170).

Independent claim 33 includes a method of facilitating a transaction between a payor and a merchant, comprising: performing a transaction with a merchant; indicating an account at a third party biller to which to charge a transaction amount ([1013]), thereby triggering payment of an amount corresponding to the transaction amount to the merchant from a liquidity source ([10140 that is not the same entity as the third party biller ([1005]); and paying the transaction

amount to the third party biller ([1015]) so that the third party biller can repay the liquidity fund from the transaction amount ([1015]).

VI. Grounds of Rejection to be Reviewed on Appeal

A. First Issue

Whether claims 1-35 are unpatentable under 35 U.S.C. § 103(a) as obvious over U.S. Pat. No. 6,317,745 to Thomas ("Thomas) in view of U.S. Pat. No. 7,082,412 to Treider et al. ("Treider")

VII. Argument

To establish a prima facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *see* M.P.E.P. §§ 706.02(j), 2143.03 (8th ed. 2001). It is impermissible to use the claimed invention as an instruction manual or "template" to piece together isolated disclosures and teachings of the prior art so that the claimed invention may be rendered obvious. A rejection based on § 103 must rest on a factual basis, with the facts being interpreted without hindsight reconstruction of the invention from the prior art. In making this evaluation, the examiner has the initial duty of supplying the factual basis for the rejection he advances. He may not, because he doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *Ex parte Haymond*, 41 USPQ2d 1217, 1219 (Bd. Pat. App. & Inter. 1996); *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968).

All of the rejected claims do not stand or fall together. Claims 1-35 contain different claim language that requires them to be considered separately and that make them separately patentable.

To facilitate understanding the invention and the prior art, applicant first briefly describes an embodiment of the invention and the Thomas and Treider references. Applicant will then point out the specific claim elements that differentiate over the references.

Overview of a Preferred Embodiment

A typical embodiment of the invention involves five parties: a merchant, a payor, a third party biller, a liquidity source, and a broker. Such an embodiment can eliminate the need for a credit card processor, thereby reducing a merchant's cost for a transaction. When a payor, such

as a student, agrees to pay a merchant, such as a university, the payor charges an amount, e.g., a tuition payment, to his account at a third party biller, such as a cell phone provider, with whom the payor already has a relationship. The cell phone provider already has in place mechanisms for billing and collecting for its own services from the student.

A liquidity source, such as a pooled fund sponsored by multiple universities, transfers to the university an amount equal to the tuition payment, typically minus a service fee, thus making the tuition money available to the university immediately. When the student pays the tuition to his cell phone company as part of his cell phone bill, the payment, minus a billing fee is sent from the cell phone company back to the liquidity source. A broker may be involved to coordinate the transaction and is compensated by a broker fee paid by either involved party. By taking advantage of the existing billing and collection system of the cell phone company, the system does not require creating a new billing and collection system. By using a liquidity source, the university is paid immediately.

Thus, funds are transferred to the university from the liquidity source, not from the student, when the transaction is made. The money is collected from the student by the third party biller, who pays back the liquidity source.

Overview of Thomas and Treider

In the primary reference, Thomas, a third party acts as a data service to hide bank account information of the parties of the transaction from each other. The third party does not provide funds and does not collect funds into its own account. The funds are transferred from the payor's account to the payee's account using the information maintained by the third party. There is no liquidity source. There is no money being provided by any source other than the payee. The trusted third party facilitates the transfer of funds between the payor and payee by keeping the

bank information of each party secret from the other party, but does not provide funds. The third party provides the payor a "universal identifier number" to designate the payee, and the third party converts the universal identifier number to the payee's bank account information to be used to transfer funds to the payees account. "It is an object of the present invention to solve the aforementioned problems of prior art systems by providing a method by which the confidential information of a first party be uniquely identified based upon name and address information supplied by a second party without the need for the second party to have access to the confidential information." Thomas, col. 3, line 65, to col. 4, line 4.

Thomas does describe an electronic bill presentment system in which a third party presents a bill to the purchaser's hoe banking system for payment. Col. 21, line 63 to col. 23, line 3. If the purchaser approves the payment, funds are transferred from the purchaser's bank account to the merchant's bank account. No funds are sent to the biller, and the biller forwards no funds to a liquidity source.

Treider teaches a "platform" that coordinates between buyers, vendors, and guaranteeing institutions. Treider describes multiple embodiments. In one embodiment, a buyer has a profile that includes a credit limit with a guaranteeing institution. A buyer purchases something from a vendor, who fills the order and transfers the receivable to the guaranteeing institution. Col. 9, lines 39-52. "Next, the buyer makes payment to the platform based upon the vendor terms 22 and the platform forwards payment to the vendor 24, minus a negotiated percentage." Col. 9, lines 52-54. Thus, the vendor is not paid until the buyer pays the platform, unless the buyer fails to pay the platform, in which case the vendor is presumably paid by the guaranteeing institution. That is, the vendor is not paid until the buyer pays or defaults and so no money is transferred to the vendor upon completion of the transaction. While Treider states that "the receivable" is

transferred to the guaranteeing institution, he also states that the payment is forwarded by the platform to the vendor, not to the guaranteeing institution. It appears, therefore, that the "receivable," that is, the right to receive payments, is not really transferred, only the information about the receivable so that the available credit can be reduced.

In a second embodiment of Treider, the purchase is made directly from the guaranteeing institution, and the order is filled by the vendor. "Next, the buyer making payments to the guaranteeing institution based upon the vendor's terms 36 and the institution forwarding payment to the vendor, minus the institution's negotiated percentage 38." Col. 10, lines 6-9. As in the first embodiment, the vendor is not paid until the user pays or defaults and so no money is transferred from a liquidity source to the vendor upon completion of the transaction.

The third and fourth embodiments are not well described, but appear to be similar to the first and second embodiments, but for international transactions. Col. 11, lines 43-65. Funds do not appear to be transferred to the vendor until the buyer pays or defaults.

In summary, while Thomas and Treider show various parties moving money to facilitate a transaction, they do not teach the claimed invention. When one attempts to analogize one party in Thomas or Treider to a party in a claim element, the analogy is invariably inconsistent with a different claim element.

Whether claims 1-35 are unpatentable under 35 U.S.C. § 103(a) as obvious over Thomas in view of Treider

Claims 1-4, 32 and 35

With regard to claims 1-4, 32, and 35, the Examiner states that Thomas discloses "the payors charging utility or other billing accounts serviced by third parties in order to complete the transactions with the merchants proceeds of the transaction being initially provided to the

merchants by one or more participating funds owned and managed separately from the third parties and unaffiliated with those third parties (i.e., credit card), and the transaction proceeds being later restored to the funds by the third parties (see abstract, also see col. 5 lines 35-65)" November 19, 2007 Final Office Action ("Final Action"), page 4. As described above, however, Thomas teaches only facilitating the transfer of funds directly from the buyer's account to the sellers account. The purchase price is not charged to a third party and no third party provides any funds. There is no credit card in Thomas. To charge the purchase to a third party would eliminate the need for Thomas, which is only required to transfer between bank accounts without disclosing the account numbers to the parties. Thus Thomas does not teach the claim elements that the Examiner says it teaches, and the rejection is improper.

The Examiner also states: "Thomas does not explicitly disclose transferring from one of the participating funds tothe [sic] merchant the transaction amount minus a service fee; compensating the third party (*i.e.*, guaranteeing financial institution) and the fund from the transaction amount, whereby the merchant has use of the major portion of the transaction amount shortly after charging the payor, the third party receives compensation for its service, and the fund receives compensation that provides a return on investment to the fund to the benefit of its investors." Final Action, pages 4-5. The Examiner states that these claim elements are taught by Treider, and quotes Treider: "The vendor ships the order with a copy of the invoice and terms back to the buyer, for example, net 30, net 60, or net 90. . . . Next, the buyer makes payment to the platform based upon the vendor terms 22, and the platform forwards payment to the vendor 24, minus a negotiated percentage." Final Action, page 5. The quoted passage shows that the vendor is paid net 30, net 60, or net 90 from the buyer via the platform, which directly contradicts the Examiner's statement that Treider teaches "payors charging utility or other billing

accounts serviced by third parties in order to complete the transactions with the merchants, proceeds of the transactions being initially provided to the merchants by one or more participating funds owned." Because Treider does not teach the claim element, the rejection is improper.

Even if the individual elements were taught by the references, applicant submits that combining the references as proposed by the Examiner would be improper. Thomas teaches a secure method for transferring funds from the bank account of the purchaser to the bank account of the vendor -- the Examiner's proposed modifications, which involve transferring funds to and from third parties, changes the principal of the operation of Thomas, which makes the modification of Thomas improper. MPEP 2143.01(VI).

Claim 1 also states "transferring funds corresponding to the transaction amount from the third party to the fund." There is no such transfer between corresponding entities in Thomas or Treider. Trying to read the "third party" on one entity in Treider and the "fund" on another entity will produce a result that is inconsistent with the other claim elements that include other actions by the "third party" or the "fund." For example, although the guaranteeing institution may eventually pay the merchant if the buyer defaults, the guaranteeing institution is not repaid by transferring funds collected by a third party to the guaranteeing institution.

Claims 2-4 are patentable for reasons described above with respect to parent claim 1. Applicant submits that claim 5 is patentable for the reasons described above with respect to claim 1.

The rejections of claims 6 and 22 are similar to the rejection of claim 1. Claim 6 includes: "providing funds corresponding to the transaction amount to the merchant from a liquidity source; billing the payor by a third party biller, the third party biller being an entity

other than the liquidity source; collecting the transaction amount from the payor by the third party biller; and providing by the third party biller funds corresponding to the transaction amount to the liquidity source, thereby providing liquidity to the merchant from the liquidity source and the liquidity source being repaid by payor funds collected by the third party biller." As described above with respect to claim 1, Thomas teaches transferring funds from the buyer's bank account to the seller's bank account, and there is no "liquidity source."

The Examiner states that Thomas discloses "billing the payor by a third party biller, the third party biller being an entity other than the liquidity source; collecting the transaction amount from the payor by the third party biller," citing col. 4, lines 25-65. The cited passage describes that a payment order is sent from a payor's statement to a home banking system, which generates a universal identifier and sends it to the trusted third party. The trusted third party then facilitates transfer of the payment from the payor's home banking system to the bank of the payee. The funds move from the bank of the payor to the bank of the payee – there is no third party biller and no liquidity source.

The Examiner also states that the Abstract of Thomas teaches "providing by the third party biller funds corresponding to the transaction amount to the liquidity source." The abstract is almost identical to col. 4, lines 25-65, and as described above, it does not teach a third party biller, a liquidity source, or the action of a third party biller providing funds to a liquidity source. Because the only source of funds in Thomas is the bank account of the payor, there is no third party biller that provides funds to the liquidity source.

Thomas does describe an electronic bill presentment system in which a third party presents a bill to the purchaser's hoe banking system for payment. Col. 21, line 63 to col. 23, line 3. If the purchaser approves the payment, funds are transferred from the purchaser's bank

account to the merchant's bank account. No funds are sent to the biller, and the biller forwards no funds to a liquidity source.

The Examiner states that "Thomas does not explicitly disclose providing funds corresponding to the transaction amount to the merchant from a liquidity source (i. e., a credit card). However, Treider discloses providing funds corresponding to the transaction amount to a merchant from a liquidity source (i.e. Treider discloses a credit card payment to the merchant, see FIG. 3. The Examiner has interpreted the Credit Card to be the liquidity source)." Claim 6 states that the liquidity source is different from the third party biller. This is not taught by Treider. If the purchaser charges his purchase to a credit card, then presumably the credit card company sends a bill to the purchaser and collects the charged amount. Also, as described above with respect to claim 1, the use of a credit card is inconsistent with the purpose of the system of Thomas and therefore the combination is improper.

Claims 7-9 and 25 are patentable for the reasons described above with respect to claim 1 and claim 22. Claim 8 introduces a broker, which is not taught by Thomas or Treider. Claims 9 and 25 include the use of a mutual fund which is not taught by Thomas or Treider. The limitation of claims 8, 9, and 25 are not addressed by the Examiner.

The rejection of claim 11, 12 and 26 is very similar to the rejection of claims 1 and 6. Claim 11 includes "a source of funds for paying the merchant when a transaction is undertaken; and a third party biller different from the source of funds for billing the payor, collecting funds from the payor, and reimbursing the source of funds." In Thomas, the source of funds for paying the merchant is the payor's bank account. "To further the above objects, there also is provided a funds transfer system for facilitating electronic funds transfer between a home banking system of a payor and an account of a payee." Col. 5, lines 16-19. Thomas describes a bill presentment

service. The bill presentment service, however, does not collect funds from the payee and reimburse the source of funds, that is, the third party biller does not get paid from the payees bank account and then reimburse the payee's bank account. The Examiner states: "Treider discloses a source of funds (i.e., credit card) for paying the merchant when a transaction is undertaken." The claim states "a third party biller different from the source of funds for billing the payor, collecting funds from the payor, and reimbursing the source of funds." Treider does not describe a credit card process in which the biller is different from the source of funds for the merchant and the credit card company reimbursing the source of funds. Moreover, as described above, the use of a credit card company is inconsistent with the purpose of Thomas.

Claims 12 states that "the source of funds is a fund in which the merchant has invested" and claim 26 includes a similar limitation. This limitation is not addressed by the Examiner in his rejection, and is not taught by the references.

Claim 13 is patentable for at least reasons described above with respect to its parent claim 11.

Claims 14-17 includes the element "accepting money to be pooled in a fund." The Examiner's citation is apparently to the Abstract of Thomas, although the position of the citation makes it unclear. The Abstract of Thomas describes transferring money from the home banking system of the payor to the bank account of the payee using a universal identifier that eliminated the need for the payor to have the bank account information of the payee by having that information reside with the trusted third party. The Abstract does not teach "accepting money to be pooled."

Claim 18 includes "requesting a liquidity source that is not the same entity as the third party biller to transfer funds corresponding to the transaction amount to the merchant, the

liquidity source being repaid by the third party biller." The Examiner states that Treider "discloses requesting a liquidity source (i.e., credit card) that is not the same as the third party biller, citing the credit card option at checkout shown in FIG. 3." Page 11. If the purchaser chooses the credit card option at check out, there is no teaching that the bill for the purchase would not come from the credit card company. "The user first shops and then views their order, and before checking out, chooses a form of payment, be it either a credit card, or through the platform of the present invention." Col. 10, lines 13-15. The Examiner states that "it would have been obvious to one of ordinary skill in the art to combine the teachings of Thomas and Treider so that credit card companies/funds providing companies can use the trusted third party system of Thomas to present bills to the payor (i.e., bills of all the credit card funds provided to the payor for making a purchase in Treider (fig. 3), and also to compensate the third party for the services they provide." While applicant is not sure what this means, the combination described by the Examiner does not appear to be the claimed invention, the rationale for combining does not seem to show any advantage for such a combination. As described above, combining a credit card with Thomas is contrary to the purpose of Thomas.

Claim 33 similarly describes a liquidity source that is different from the third party biller. As described above with respect to claim 18, the credit card company is both the liquidity source and the biller.

Claim 19 is patentable for reasons described above with respect to parent claim 18.

Regarding claim 20 and 24, the Examiner states "Treider makes this disclosure (i.e., form of payment (credit card and ProfitScape, see fig. 3)). Thus it would have been obvious to combine Thomas and Treider to provide users with different payment options or a choice of funding sources." Claim 20 is dependent on claim 18, which includes "requesting a liquidity

source that is not the same entity as the third party biller to transfer funds corresponding to the transaction amount to the merchant, the liquidity source being repaid by the third party biller." Because the liquidity source is not the same entity as the third party biller, the liquidity source can be selected independently of the third party biller. The Examiner states that Treider teaches two liquidity sources – a credit card or the ProfitScape platform. The ProfitScape platform is not a liquidity source, because the merchant is not paid until the buyer pays or defaults on the payment terms.

Claim 24 is patentable for reasons described above with respect to parent claim 22.

Claims 21 and 23 are patentable for the reasons described above with respect to respective parent claims 18 and 22.

Claim 27 states the transaction amount is "charged to a billing account at a third party that offers goods or services and in which a subject matter of the transaction is not the goods or services offered by the third party." For example, the merchant may be a university that offers education, and the third party biller may be a cell phone provider. In his rejection, the Examiner cites col. 5, line 15-55 and the abstract of Thomas. Col. 5, lines 15-35 describes a funds transfer system in which funds are transferred from the payor's account to the payee's account. Col. 5, lines 36-58, describes a bill presentment system that presents bills, but the presented does not collect the payment. The Abstract describes the use of a third party to maintain the account numbers hidden from the parties

Claim 28 and 29 are patentable for reasons described above with respect to parent claim 22. Moreover, the references do not disclose a billing account at a utility company, a department store, an oil or gasoline company or a cellular telephone provider. The Examiner states that "the location of the billing account i.e., utility company, a department store, or an oil

or gasoline company is a descriptive non-functional element which does not carry any patentable weight." Applicant submits that the identity of the biller is not merely descriptive. "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data." MPEP 2106.01.

In his rejection of claims 30, 31, and 34, the Examiner states that Thomas discloses a list of steps, some of which (e.g., verifying by a biller the validity of a charge of a transaction amount for a transaction between a merchant and a payor) are taken from claim 30 and some of which (e.g., transmitting electronically the universal identifier to the trusted third party) are taken from Thomas and are not claimed. The Examiner states that Thomas teaches "the liquidity source being unaffiliated with the biller. . . and transferring an amount corresponding to the transaction amount from a liquidity source (see col. 6, lines 22-55)." The Examiner later states "Treider discloses a credit card payment to the merchant, see fig. 3. The Examiner has interpreted the Credit card to be the liquidity source." It is unclear how the Examiner finds a liquidity source in Thomas, and then states that the liquidity source is a credit card from Treider.

The Examiner cites Thomas col. 6, lines 22-55, but those passages relate to transferring funds from the payor to the vendor using a universal identifier and presenting a bill that, if accepted, is paid from the payor's account to the vendor's account. The use of credit card is inconsistent with the purpose of Thomas, as described above, and the combination, even if it were to somehow produce the claimed invention, is therefore improper.

Claims 31 and 32 are patentable for reasons described above with respect to parent claim 30.

Claim 34 is patentable for reasons described above with respect to parent claim 33.

CONCLUSION

Appellant has demonstrated that claims 1-35 are not obvious over Thomas in view of Treider and respectfully requests that the rejection be reversed.

Respectfully submitted,

Date: 9/19/08

By: [signature]

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IX. Claims Appendix

1. (rejected) A method of financing transactions between payors and merchants, the payors charging utility or other billing accounts serviced by third parties in order to complete the transactions with the merchants, proceeds of the transactions being initially provided to the merchants by one or more participating funds owned and managed separately from the third parties and unaffiliated with those third parties, and the transaction proceeds being later restored to the funds by the third parties, the method comprising:

charging by a payor to a third party billing account a transaction amount charged by a merchant;

transferring from one of the participating funds to the merchant the transaction amount minus a service fee;

collecting by the third party the transaction amount from the payor; and

transferring funds corresponding to the transaction amount from the third party to the fund,

compensating the third party and the fund from the transaction amount, whereby the merchant has use of the major portion of the transaction amount shortly after charging by the payor, the third party receives compensation for its service, and the fund receives compensation that provides a return on investment to the fund to the benefit of its investors.

2. (rejected) The method of claim 1 in which a broker fee is withheld by the fund from the merchant to compensate a broker for coordinating the transaction between the payor, the third party, the merchant, and the fund and further comprising transferring the broker fee to the broker.

3. (rejected) The method of claim 1 in which transferring funds corresponding to the transaction amount from the third party to the fund includes transferring an amount equal to the transaction proceeds minus a billing fee.

4. (rejected) The method of claim 1 in which the time between collecting the transaction amount from the payor and transferring the funds corresponding to the transaction amount to the fund is at least three days, thereby allowing the third party use of the transaction amount for at least three days.

5. (rejected) A computer readable media having thereon instructions for executing computer instructions in accordance with claim 1.

6. (rejected) A method of facilitating payment between a payor and a merchant, comprising:

undertaking by a payor of an obligation to pay a merchant a transaction amount;

providing funds corresponding to the transaction amount to the merchant from a liquidity source;

billing the payor by a third party biller, the third party biller being an entity other than the liquidity source;

collecting the transaction amount from the payor by the third party biller; and

providing by the third party biller funds corresponding to the transaction amount to the liquidity source, thereby providing liquidity to the merchant from the liquidity source and the liquidity source being repaid by payor funds collected by the third party biller.

7. (rejected) The method of claim 6 in which providing funds corresponding to the transaction amount to the merchant from a liquidity source includes providing funds equal to the transaction amount minus a service fee, a first portion of the service fee being used to

compensate the liquidity source and a second portion of the service fee being used to compensate the biller.

8. (rejected) The method of claim 6 further comprising coordinating by a broker the flow of information and funds between the payor, the merchant, the third party biller, and the liquidity source, the broker being compensated by a third portion of the service fee.

9. (rejected) The method of claim 6 in which providing funds corresponding to the transaction amount to the merchant from a liquidity source includes providing funds from a mutual fund.

10. (rejected) The method of claim 6 in which billing the payor by a third party biller includes billing the payor by a third party that offers goods or services and that maintains a billing system for collecting charges in connection with its own goods or services.

11. (rejected) A system of providing liquidity to merchants and facilitating payments by payors, comprising:

a source of funds for paying the merchant when a transaction is undertaken; and

a third party biller different from the source of funds for billing the payor, collecting funds from the payor, and reimbursing the source of funds.

12. (rejected) The system of claim 11 in which the source of funds is a fund in which the merchant has invested.

13. (rejected) The system of claim 11 in which the source of funds is other than a traditional bank.

14. (rejected) A method of financing transactions between merchants and payors, comprising:

accepting money to be pooled in a fund;

in response to a transaction between a merchant and a payor, a transaction amount being charged to the payor's account at a third party who is unrelated to the party accepting the money to be pooled in the fund, transferring the transaction amount less a service fee from the pooled fund to the merchant; and

receiving funds corresponding to the transaction amount collected from the payor by the unrelated third party.

15. (rejected) The method of claim 14 in which accepting money to be pooled in a fund includes accepting money from multiple merchants and further comprising distributing a potion of the service fee to one or more of the multiple merchants.

16. (rejected) The method of claim 14 in which accepting money from multiple merchants includes accepting money from institutions of higher education.

17. (rejected) The method of claim 14 in which transferring the transaction amount less a service fee from the pooled fund to the merchant includes transferring the transaction amount less a service fee in which the transaction amount is charged to the payor's account at a third party who maintains a billing system that bills for goods or services that are provided by the third party and that are not the subject of the transaction.

18. (rejected) A method of brokering transactions between payors and merchants, comprising:

presenting to a payor, in response to a transaction between the payor and a merchant, a request to select an account at a third party biller to which to charge a transaction amount;

requesting authorization of the charge from the selected third party biller;

triggering the selected third party biller to bill the payor; and

requesting a liquidity source that is not the same entity as the third party biller to transfer funds corresponding to the transaction amount to the merchant, the liquidity source being repaid by the third party biller.

19. (rejected) The method of claim 18 further comprising collecting a broker fee from the liquidity source or from the third party biller.

20. (rejected) The method of claim 18 in which requesting a liquidity source to transfer funds includes selecting one of multiple liquidity sources.

21. (rejected) The method of claim 18 in which requesting a liquidity source to transfer funds corresponding to the transaction fee to the merchant includes requesting the liquidity source to transfer funds equal to the transaction amount minus a service fee, a portion of the service fee being retained by the liquidity fund.

22. (rejected) A method of facilitating payment between a payor and a merchant, comprising:

participating as a merchant in a transaction in which a payor agrees to pay the merchant a transaction amount to be charged to a billing account at a third party; and

receiving funds corresponding to the transaction amount from a liquidity source, the liquidity source being an entity other than the third party;

wherein participating in the transaction includes triggering a third party biller, to

bill the payor;

collect the transaction amount from the payor; and

transfer a sum corresponding to the transaction amount to the liquidity source, the liquidity source providing liquidity to the merchant and being repaid by payor funds collected by the third party biller.

23. (rejected) The method of claim 22 in which receiving funds corresponding to the transaction amount from a liquidity source includes receiving funds equal to the transaction amount minus a service fee that is paid in part to the liquidity source and in part to the third party biller.

24. (rejected) The method of claim 22 participating as a merchant in a transaction in which a payor agrees to pay the merchant a transaction amount to be charged to a third party billing account includes having the payor select of a third party billing account from multiple third party billing accounts.

25. (rejected) The method of claim 22 in which receiving funds corresponding to the transaction amount from a liquidity source includes receiving funds from a mutual fund.

26. (rejected) The method of claim 22 in which receiving funds corresponding to the transaction amount from a liquidity source includes receiving funds from a pooled fund in which the merchant has invested.

27. (rejected) The method of claim 22 in which participating as a merchant in a transaction in which a payor agrees to pay the merchant a transaction amount to be charged to a billing account at a third party includes participating as a merchant in a transaction in which a payor agrees to pay the merchant a transaction amount to be charged to a billing account at a third party that offers goods or services and in which a subject matter of the transaction is not the goods or services offered by the third party.

28. (rejected) The method of claim 22 in which participating as a merchant in a transaction in which a payor agrees to pay the merchant a transaction amount to be charged to a billing account at a third party includes participating as a merchant in a transaction in which a

payor agrees to pay the merchant a transaction amount to be charged to a billing account at a utility company, a department store, or an oil or gasoline company.

29. (rejected) The method of claim 22 in which participating as a merchant in a transaction in which a payor agrees to pay the merchant a transaction amount to be charged to a billing account at a third party includes participating as a merchant in a transaction in which a payor agrees to pay the merchant a transaction amount to be charged to a billing account at a cellular telephone provider.

30. (rejected) A method of facilitating a transaction between a merchant and a payor, comprising:

verifying by a biller the validity of a charge of a transaction amount for a transaction between a merchant and a payor;

charging the transaction amount to the payor's account, thereby triggering payment of an amount corresponding to the transaction amount from a liquidity source to the merchant, the liquidity source being unaffiliated with the biller;

collecting the transaction amount from the payor; and

transferring an amount corresponding to the transaction amount to repay the liquidity source.

31. (rejected) The method of claim 30 in which verifying the validity of a charge of a transaction amount for goods or services provided by a merchant includes verifying the validity of a charge by a biller that provides goods or services different from those that are the subject of the transaction.

32. (rejected) The method of claim 30 in which charging the transaction amount to the payor's account, thereby triggering payment of an amount corresponding to the transaction

amount from a liquidity source to the merchant, includes triggering payment of the transaction mount minus a service fee and further comprising receiving a portion of the service fee as a billing fee.

33. (rejected) A method of facilitating a transaction between a payor and a merchant, comprising:

performing a transaction with a merchant;

indicating an account at a third party biller to which to charge a transaction amount, thereby triggering payment of an amount corresponding to the transaction amount to the merchant from a liquidity source that is not the same entity as the third party biller; and

paying the transaction amount to the third party biller so that the third party biller can repay the liquidity fund from the transaction amount.

34. (rejected) The method of claim 33 in which the indicating an account at a third party biller to which to charge a transaction amount includes indicating an account at a third party biller that provides to the payor goods or services different from those that are the subject of the transaction.

35. (rejected) The method of claim 1 in which the payors charging utility or other billing accounts serviced by third parties in order to complete the transactions with the merchants includes the payors charging utility or other billing accounts serviced by third parties who use the billing accounts for billing for their own products or services.

X. Evidence Appendix

None

XI. Related Proceedings Appendix

None